

The Law Office of Daniel Ruggiero

Daniel Goldsmith Ruggiero
275 Grove St., Suite 2-400
Newton, MA, 02466
P: (339) 237-0343
E: DRuggerioEsq@gmail.com

The Law Office of Jeffrey Lohman, P.C.

4740 Green River Rd., Suite 206
Corona, CA 92880
T: (866) 329-9217 ext. 1007
E: AlysonD@jlohman.com

Attorneys for Plaintiff,
DOUGLAS SAVAGE

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA
PHILADELPHIA DIVISION**

JANET SALYERDS,)	Case No.
)	
Plaintiff,)	PLAINTIFF'S COMPLAINT FOR
)	DAMAGES
v.)	
CAPITAL ONE BANK (USA) N.A.,)	
)	
Defendant.)	
)	
)	

COMPLAINT

JANET SALYERDS ("Plaintiff"), by her attorneys, alleges the following against
CAPITAL ONE BANK (USA) N.A. ("Defendant"):

1. Plaintiff brings this action on behalf of herself individually seeking damages and any other available legal or equitable remedies resulting from the illegal actions of Defendant, in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff's cellular telephone in violation of the Telephone Consumer Protection Act (hereinafter "TCPA"),

1 47 U.S.C. § 227 et seq.

2 **JURISDICTION AND VENUE**

- 3 2. Defendant conducts business in the state of Pennsylvania, and therefore, personal
4 jurisdiction is established. Venue is proper pursuant to 28 U.S.C. 1391(b)(2).
- 5 3. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and 47 U.S.C. §227(b)(3). See,
6 *Mims v. Arrow Financial Services, LLC*, 132 S.Ct. 740 (2012), holding that federal and
7 state courts have concurrent jurisdiction over private suits arising under the TCPA.
- 8 4. Venue is proper in the United States District Court for the Eastern District of Pennsylvania
9 pursuant to 28 U.S.C § 1391(b) because Plaintiff resides within this District and a
10 substantial part of the events or omissions giving rise to the herein claims occurred, or a
11 substantial part of property that is the subject of the action is situated within this District.

12 **PARTIES**

- 13 5. Plaintiff is a natural person residing in the county of Bucks in the city of Trevoze,
14 Pennsylvania.
- 15 6. Defendant is a Virginia corporation doing business in the State of Pennsylvania, with its
16 headquarters located in McLean, Virginia.
- 17 7. At all times relevant to this Complaint, Defendant has acted through its agents, employees,
18 officers, members, directors, heir, successors, assigns, principals, trustees, sureties,
19 subrogees, representatives and insurers.

20 **FACTUAL ALLEGATIONS**

- 21 8. Defendant placed collection calls to Plaintiff seeking and attempting to collect on alleged
22 debts owed by Plaintiff.
- 23 9. Defendant placed collection calls to Plaintiff's cellular telephone ending in 9344.
- 24
- 25

1 10. Defendant places collection calls to Plaintiff from phone numbers including, but not
2 limited to, (800) 955-6600.

3 11. Per its prior business practices, Defendant's calls were placed with an automated telephone
4 dialing system ("auto-dialer").

5 12. Defendant used an "automatic telephone dialing system", as defined by 47 U.S.C. § 227(a)
6 (1) to place its telephone calls to Plaintiff seeking to collect a consumer debt allegedly
7 owed by Plaintiff, JANET SALLYERDS.

8 13. Defendant's calls constituted calls that were not for emergency purposes as defined by 47
9 U.S.C. § 227(b)(1)(A).

10 14. Defendant's calls were placed to a telephone number assigned to a cellular telephone
11 service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. §
12 227(b)(1).

13 15. Defendant never received Plaintiff "prior express consent" to receive calls using an
14 automatic telephone dialing system or an artificial or prerecorded voice on his cellular
15 telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

16 16. On or about August 29, 2017, Plaintiff called into Defendant's company at phone number
17 (386) 269-0308. Plaintiff spoke with Defendant's female representative and requested that
18 Defendant cease calling Plaintiff's cellular phone.

19 17. During the conversation, Plaintiff gave Defendant her name, social security number and
20 date of birth to assist Defendant in accessing her account before asking Defendant to stop
21 calling her cell phone ending in 9344.
22
23
24
25

1 18. Plaintiff revoked any consent, explicit, implied, or otherwise, to call his cellular telephone
2 and/or to receive Defendant's calls using an automatic telephone dialing system in his
3 conversation with Defendant's representative on August 29, 2017.

4 19. Despite Plaintiff's request to cease, Defendant continued to place collection calls to
5 Plaintiff after August 29, 2017.

6 20. After the telephone conversation on August 29, 2017, Defendant placed forty-two (42)
7 collection calls to Plaintiff's cellular phone using an automatic telephone dialing system.

8
9 **FIRST CAUSE OF ACTION**
10 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**
11 **47 U.S.C. § 227**

12 21. Plaintiff repeats and incorporates by reference into this cause of action the allegations set
13 forth above at Paragraphs 1-20.

14 22. The foregoing acts and omissions of Defendant constitute numerous and multiple
15 negligent violations of the TCPA, including but not limited to each and every one of the
16 above cited provisions of 47 U.S.C. § 227 et seq.

17 23. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq., Plaintiff is
18 entitled to an award of \$500.00 in statutory damages, for each and every violation,
19 pursuant to 47 U.S.C. §227(b)(3)(B).

20 24. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in the future.

21 **SECOND CAUSE OF ACTION**
22 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER**
23 **PROTECTION ACT**
24 **47 U.S.C. § 227 et. seq.**

25 25. Plaintiff repeats and incorporates by reference into this cause of action the allegations set
forth above at Paragraphs 1-20.

1 26. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing
2 and/or willful violations of the TCPA, including but not limited to each and every one of
3 the above cited provisions of 47 U.S.C. § 227 et seq.

4 27. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq.,
5 Plaintiff is entitled an award of \$1,500.00 in statutory damages, for each and every
6 violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

7 28. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in the future.

8
9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff, JANET SALYERDS, respectfully requests judgment be
11 entered against Defendant, CAPITAL ONE BANK (USA) N.A. for the following:

12
13 **FIRST CAUSE OF ACTION**

14 29. For statutory damages of \$500.00 multiplied by the number of TCPA violations alleged
15 herein (42), \$21,000.00;

16 30. Actual damages and compensatory damages according to proof at time of trial;

17 **SECOND CAUSE OF ACTION**

18 31. For statutory damages \$1,500.00 multiplied by the number of TCPA violations alleged
19 herein (42), \$63,000.00;

20 32. Actual damages and compensatory damages according to proof at time of trial;

21 **ON ALL CAUSES OF ACTION**

22 33. Actual damages and compensatory damages according to proof at time of trial;

23 34. Costs and reasonable attorneys' fees;

24 35. Any other relief that this Honorable Court deems appropriate.

25 **JURY TRIAL DEMAND**

36. Plaintiff demands a jury trial on all issues so triable.

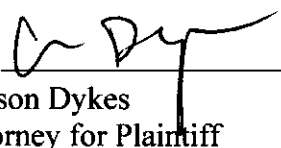
RESPECTFULLY SUBMITTED

Dated: May 21, 2018

The Law Office of Daniel Ruggiero

By: 
DANIEL RUGGIERO
Attorney for Plaintiff

Pro Hac Vice Application to Follow:
The Law Offices of Jeffrey Lohman, P.C.

By: 
Alyson Dykes
Attorney for Plaintiff